



**National Postal MailHandlers Union**  
**Local 307 – Michigan**

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Via electronic filing and, Delivery confirmation – US mail

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RE: Certificate of Service of request for Summary Judgment to NLRB case #  
07-CB-074661

**United States of America**  
**Before the National Labor Relations Board**  
**Region Seven**

Local 307, National Postal  
Mail Handlers Union, A Division of the  
Laborers' International Union of North  
America, AFL CIO  
(United States Postal Service)  
Respondent

And

**Re: 07-CB-074661**

Glenn Berrien, an Individual  
Charging Party

**Request for Summary Judgment**

National Postal Mail Handlers Union (Respondent) believes that a summary judgment is appropriate in this case since there exists is no conflicting and/or genuine issue of material fact, only conclusions of law. As with summary judgment procedure set forth in Rule 56 of the Federal rules of Civil Procedure Respondent does state that

1. On or about January 17, 2012, Charles A. Alaimo, member of the National Postal Mail Handlers Union (NPMHU) filed internal union disciplinary charges against **Glenn Berrien**, an employee of the USPS and a member of the Respondent, regarding his drafting, drawing up and filing of charges with the NLRB against the NPMHU on behalf of four (4) letter carrier craft employees;
2. On or about February 24, 2012, **Glenn Berrien** was notified of internal union charges filed against him and afforded an opportunity to respond to the Union's executive board.
3. As a direct result of being informed of the pending charges and notification to respond to the executive board on said charges, Glenn Berrien did file retaliatory unfair labor charges against the NPMHU and its president Jim Haggarty;
4. Contained in his complaint against the NPMHU, **Glenn Berrien** claims the charges against him were "politically motivated" and aimed at interfering with his "rights to participate in concerted activities,"
5. The Board has failed to establish a cause of action since it erroneously argues that the

internal union charges pending against Glenn Berrien are improper, ultimately acting to discourage access by an employee-member to the Board's processes;

6. The Board lacks jurisdiction in this matter;
7. The Board has failed to substantiate its position or submitted relevant precedent lending Support thereof and as a result is improperly interfering with the laws, rules and regulations governing the NPMHU and its rights as a union to fulfill its obligations to its membership.

## **Memorandum in Support**

### **Failure to State a Valid Cause of Action**

In any complaint the cause of action lies at its heart. It is not sufficient to merely state that certain events occurred that entitle a complainant to some form of relief since elements of each cause of action must be detailed in the complaint. Furthermore, it is important that such claims be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts.

A cause of action must begin with a major premise that one or more laws were contravened. This is then followed up with the relevant facts and laws that give rise to the claim. The cause of action then concludes with a statement that a person and/or entity is responsible for the plight of the complainant and that he/she is entitled to some form of redress. There is a caveat in all this though.

Any cause of action can arise from an act, a failure to perform a legal obligation, a breach of duty, or a violation or invasion of a right. The importance of the act, failure, breach, or violation lies in its legal effect or characterization and in how the facts and circumstances, considered as a whole, relate to applicable law. And there lies the fault in the matter before us.

The basis or Gravamen of the Charging Party argument and relied upon by the Board rests exclusively on the union affiliation of the four original Complainants (La Shaunda Hubbard (07-CB-069598), Jirani Ali Rashed (07-CB-069567), Felicia Maxwell (07-CB-069341) and Michael Fulks (07-CB-069788))<sup>1</sup>, the basis from which the Charging Party's complaint springs from. The Board has consistently asserted that, "respondent has been restraining and coercing employees in the exercise of the Rights guaranteed in section 7 of the act in violation of section 8 (b) (1)(A) of the act and within the meaning of the PRA" since the "Charging party assisted other employees in the filing of unfair labor practice charges with the Board."

Article 12.6 of the National Agreement and its attending subsections as cited by original Complainants deals strictly with the involuntarily reassignment of mail handler craft employees. Played down by Glenn Berrien and apparently disregarded by the Board is the simple fact Complainants freely chose to **voluntarily transfer** from the mail handler craft to another (carrier), and in doing so created a set of problems for themselves.

First and foremost any voluntary transfer to another craft automatically and irrevocably extinguishes all retreat rights (at issue) with regard to the abandoned craft. Secondly, under the NLRA, Section 8(b)(1)(A), a union can only be held accountable to an employee if, and only if while acting in the capacity of a statutory bargaining representative. In the case before us once complainants voluntarily chose to become carriers they automatically fell under the statutory representation of the National Association of Letter Carriers (NALC). To claim otherwise lacks any and all factual support and legal foundation.

### **Lack of Jurisdiction**

The NLRB's jurisdiction is limited to specific types of Controversies. It is well established that when questions involving unfair labor practices of a union are investigated by the National Labor Relations Board, they are based on the premise that the union in question is a statutory bargaining representative and as such owes a duty of fair representation to all the employees it represents. Even though a union may exercise a wide range of reasonable discretion in carrying out the representative function, it is in violation of Section 8(b) (1) (A) if, while acting as the employees statutory bargaining representative, it takes or, withholds action in connection with their employment because of their union activities or for any irrelevant or arbitrary reason such as an employee's race or sex,

The NPMHU exclusively represents the Postal Service's mail handler craft employees. Under the National Agreement between the NPMHU and the Postal Service this point is stressed where it states in pertinent part:

#### **Section 1.1 Recognition**

*The Employer recognizes the Union designated below as the exclusive bargaining representative of all employees in the bargaining unit for which the Union has been recognized and certified at the national level,*

*National Postal Mail Handlers Union, AFL-CIO, a Division of the Laborers' International Union of North America—Mail Handlers.*

#### **Section 1.2 Exclusions**

*The bargaining unit set forth in Section 1 above does not include, and this Agreement does not apply to:*

##### **H. City Letter Carriers**

Therefore the Board's right or prerogative in making any determination with regard to claims of unfair labor practices by a union rests entirely on whether or not it has the requisite jurisdiction over the subject matter of the case. Because the above complainants voluntarily transferred (reassigned) themselves to the carrier craft in early 2010, (resulting in the NPMHU not being their statutory bargaining representative for almost a full two years) the NLRB therefore lacks the requisite jurisdiction over these

**matters. To do otherwise would place the NLRB in complete violation of the very act it is entrusted to enforce,**

## **Summary**

When Complainants' voluntarily transferred to the clerk craft almost a full two years ago (and well past the six (6) month time frame in which to file a complaint with the NLRB) they did automatically and irrevocably divest themselves of the NPMHU representation and further did extinguish for themselves all retreat rights with regard to the mail handler craft. Furthermore, under Section 8(b)(1)(A) of the National Labor Relations Act, a union can only be held accountable to an employee if, and only if it is acting in the capacity of a statutory bargaining representative. Here, as already noted above, once complainants voluntarily chose to become carriers their statutory representation automatically fell under the auspices of the National Association of Letter Carriers. In other words, if they have a legitimate complaint, it's with the NALC.

The NLRB's frivolous inquiry revolving around what someone was supposed to have said or done is meaningless. Probate courts do not handle criminal indictments and family courts are forbidden to hear bankruptcies. Yet that is what the Board, at least in principle, is attempting to do here. No, what is overriding and controlling is the law. And here the law specifically and unequivocally spells out that for an employee to file a complaint against a union: 1) that union must be the employee's statutory bargaining representative; and 2) any complaint with the NLRB must be filed within six (6) months of the action complained about. In other words, if complainants really had a problem with the supposed actions of the NPMHU, and wanted to file charges with the NLRB they had up to a year and a half ago to do so and yet still couldn't since they were no longer members of that union. Failing in that respect they now belatedly attempt to do so with the full cooperation of the Board,

## **Relevant Precedent**

Respondent would now like to submit two relevant cases with regard to the issues before us.

1. *Northern California District Council [Hayward Baker Company], Local Union No. 294; Case 32-CB-1428; 275 NLRB 48)* and *Northern California District Council [Granite-Ball-Groves]; Case 32-CB.1432; 275 NLRB No.48.*
- 2, *Freight Drivers and Helpers Local Union No. 557, Case 5-CB-1581, 216 NLRB No.170.*

Both of these cases are complex in the sense of having a multitude of facts and circumstances. But even more so when reviewed as a whole their relevant application to the case at hand. Respondent will give a brief synopsis of each for comparison purposes in order to show how these past decisions accommodate and lend support to the Respondent's position, or at the very minimum, act to nullify conclusions drawn by the Board

## **Facts**

### **"Freight Drivers and Helpers Local 557" (218 NLRB No.170)**

in *Local 557* the complaint charged the Respondent (Union) with having violated Section 8(b)(1)(A), and 8(b)(3) as well, by engaging in the following acts and conduct: (1) filing internal union disciplinary charges against Robert Miller, an employee of the Company and a member of the Respondent, because he had testified on behalf of the Company in an arbitration proceeding involving the discharge of another union member; (2) notifying Miller to appear before Respondent's executive board for a hearing on the internal union charges filed against him; (3) threatening Miller at the hearing held on such charges with a fine and/or expulsion from Respondent because he had testified on behalf of the Company against a member of Respondent; and (4) also threatening Miller "and other members whose names are unknown" with such union disciplinary action should they in the future testify in arbitration proceedings on behalf of the Company against any member of Respondent. In addition the complaint was amended charging the Respondent with violating the same sections of the Act by two alleged acts of assault or threats of assault alleged to have been engaged in by Respondent's job stewards against Miller because he had testified on behalf of the Company in the arbitration proceeding.

### **"Northern California District Council, Local 294" (275 NLRB 48)**

In *Local 294* charged the Respondent (Union) with having violated Section 8(b)(1)(A) of the Act by filing internal union charges against the Charging Parties, employees Breniman and Jensen, because they filed unfair labor practice charges with the Board, and that the Respondent District Council violated Section 8(b)(1)(A) by scheduling internal union trials, trying, judging, and admonishing the Charging Parties for filing unfair labor practice charges

On May 18, 1983, and immediately upon receipt of Breniman's unfair labor practice charge, Leonard, acting in his capacity as the president and field representative of Respondent Local Union brought charges against him. In support of his charges Leonard enclosed a copy of the unfair labor practice charge filed by Breniman and was said to have stated words to the effect, *"This member filed charges against me with the NLRB?"*

On May 23, 1983, and immediately upon receipt of Jensen's unfair labor practice charge, Leonard, acting in his capacity as the president and field representative of Respondent Local Union brought charges against him. In support of his charges Leonard enclosed a copy of the unfair labor practice charge filed by Jensen.

## **NPMHU**

In the case before us now, the complaint charged against the Respondent (NPMHU) is derived from the (1) its filing of internal union disciplinary charges against Glenn Berrien, an employee of the USPS and a member of the Respondent (National Postal Mail Handlers Union), regarding his drafting and filing of NLRB charges against the NPMHU on behalf of four letter carrier craft employees (La Shaunda Hubbard (07-CB-069598), Jirani All Rashed (07-CB-069567), Felicia Maxwell (07-C8-069341) and Michael Fulks (07-C8-069788); (2) notifying Glenn Berrien that the internal union charges filed against him were not deemed untimely and or frivolous by the executive board

### **Different Issues**

#### **"Freight Drivers and Helpers Local 557" (218NLRB No.170)**

Is it a violation of the Act for a labor organization to impose, or threaten to impose, purely Internal union sanctions upon an employee-member for appearing as a witness on behalf of an employer in an arbitration proceeding arising from a grievance presented by the labor organization on behalf of the member being disciplined? (Yes)

#### **"Northern California District Council, Local 294" (275NLRB 48)**

Is it a violation of the Act for a labor organization to impose, or threaten to impose, purely internal union sanctions upon an employee-member for filing personal unfair labor practice charge on his/her own behalf against Respondent union? (Yes)

### **Whereas NPMHU**

Is it a violation of the Act for a labor organization to impose, or threaten to impose, purely internal union sanctions upon an employee-member for representing, drafting, drawing up and physically filing charges with the NLRB against employee-members union on behalf of other craft employees? (No)

### **Different Stratagems**

#### **"Freight Drivers and Helpers Local 557" (218 NLRB No.170)**

The focus of *Local 557* rests on the premise that the grievance/arbitration process must never be compromised. This decision exclusively addressed the grievance/arbitration process per the collective bargaining agreement. It never once touched on the access by an employee to the Board's processes.

There are two separate approaches here in any given situation such as this. The grievance/arbitration approach as embodied in the collective bargaining agreement is embraced by the court in *Local 557*, Complainant in *Local 557* went to the NLRB only after exhausting the avenues as provided under the collective bargaining agreement as evidenced in the testimony and documentation provided. Therefore, the action before the NLRB only came into existence via the grievance/arbitration process which only came into existence via the collective-bargaining agreement.

Reviewing this case further furnishes the criteria relied upon in coming to its conclusions. What could be referred to as the "Miller Rule" states that any participant is protected from union retaliation when:

1. Actually involved in the grievance/arbitration process
2. When said person has standing (the aggrieved) in the matter;
3. within the same union;
4. Accompanied by threats of expulsion/fines for any future behavior; along with charges with regard to threats of physical assaults.

Now when applying the facts with regard to the case at hand to the "Miller Rule", its clearly demonstrated how in reality the NPMHU actions are far from being out of line:

1. This matter does not involve the grievance/arbitration process (the four original Complainant's filed directly with the NLRB);
2. Glenn Berrien has no standing in these complaints;
3. The Issue from which the current case springs from involves complaints involving carrier craft employees (NALC) directed against another unrelated, separate union (NPMHU).
4. No threats of expulsion and no threats of expulsion/fines for any future behavior and certainly no threats with regard to physical assaults.

The crux of this case is that Miller had testified on behalf of the Company in an arbitration proceeding involving the discharge of another (fellow) union member. As presented in the decision:

*It is evident that the executive board in considering the matter before it was primarily concerned, not with the truthfulness of Miller's testimony in the arbitration proceeding, but rather with the fact that Miller, by testifying on behalf of the Employer, did, as one member put it, gone 'against a union member,... especially a steward. "(pg. 1119)*

The Respondent has never had an issue with the four original carrier craft Complainants [La Shaunda Hubbard (07-CB-069598), Jirani All Rashed (07-CB-069567), Felicia Maxwell (07-CB069341) and Michael Fulks (07-CB-069788)]. What the Respondent took exception to, was the fact that it was one of its own members who drafted, personally drew up and filed (facilitator) the complaints against his own union. In doing so it was contended in the internal union complaint that Glenn Berrien had pursued, acted out and exhibited behavior clearly and unequivocally in violation of the Constitution of the National Postal Mail Handlers Union, as amended by the National Convention.



## **"Northern California District Council, Local 294" (275 NLRB 48)**

On May 18, 1983, and immediately upon receipt of Breniman's unfair labor practice charge, Leonard, acting in his capacity as the president and field representative of Respondent Local Union brought charges against him. In support of his charges Leonard enclosed a copy of the unfair labor practice charge filed by Breniman and was said to have stated words to the effect, *This member filed charges against me with the NLRB!*"

On May 23, 1983, and immediately upon receipt of Jensen's unfair labor practice charge, Leonard, acting in his capacity as the president and field representative of Respondent Local Union brought charges against him. In support of his charges Leonard enclosed a copy of the unfair labor practice charge filed by Jensen.

Was there no limit to the effrontery and shamelessness of Leonard, acting in his capacity as the president and field representative of Respondent Local Union and the District Council here? With the president of the union going so far as to actually include copies of the unfair labor practice charges and personalizing it as in *"charges against me"*. This thuggish, if not muscular approach on the part of him and the District Council all but warranted the Board's intervention.

### **Summary**

Had the Board taken the time to fully explore the facts and issues of the current case it would have detected the weakness in *the* charges, the errors in their arguments and position taken. As the *Northern California District Council and Freight Drivers and Helpers* precedent repeatedly points out, Respondent was acting well within its legal rights.

### **Conclusion**

Charles A. Alaimo, a member of the National Postal Mail Handlers Union (NPMHU) filed internal union disciplinary charges against Glenn Berrien, an employee of the USPS and a Member of the Respondent, regarding his drafting, drawing up and filing of charges with the NLRB against the NPMHU on behalf of four carrier craft employees.

When Glenn Berrien was notified of the pending charges and notification to respond to the executive board, he filed retaliatory unfair labor charges against the NPMHU and its president Jim Haggarty and claiming:

*"On February 14, 2012 The (sic) MN Union through its agents notified me that they were filing charges against me seeking my Removal(sic) as A(sic) Union Member(sic), I believe(sic) those charges are Politically(sic) motivated and aimed at interfering with my rights (sic) to participate in concerted activities."* (emphasis added) (NLRB - 508).

The Board erroneously argues that the internal union charges pending against Glenn Berrien were improper (acting to discourage access by an employee-member to the Board's processes) while at the same time failing to establish a cause of action as well as jurisdictional authority.

The Board has further failed to produce relevant precedents, or laws for that matter in substantiating its position and as a direct result is improperly interfering with the laws, rules and regulations governing the NPMHU and its rights as a union to fulfill its obligations to its membership,

The Board hears hoof beats and thinks zebras not horses. Repeatedly the Board attempts to paint Charles A. Alaimo (the individual and member of Respondent union) who filed the internal union disciplinary charges against Glenn Berrien had done so in the capacity as its agent (see par. 6 of "Complaint and Notice of Hearing"). Yet this could only be accomplished by the Board employing an unwarranted leap of logic. Its threadbare argument resting exclusively on the premise that since Alaimo is a union steward, therefore he could have only filed his complaint in that capacity. Or, what is called a conditional claim which implies something along the lines of, "If all philosophers are thinkers and John is a philosopher, then John is a thinker." Not that it matters Alaimo has repeatedly informed the Board (ad nauseam) that he was following his own conscience and acting in the capacity as member in good standing. The Board contends that the sheer fact that he is a steward, without a doubt means he was acting in that capacity when filing.

Taking the Board's above contention to its absurd end one need go no further than the local police department. Relying on the Board's logic no Department of Internal Affairs could pursue disciplining an officer since to do so would open them up to charges of coercion used to discourage, retard or defeat access to the Board's processes. Furthermore, as a rule the general membership of a union does not have access to much, if any, of the internal union information (Privacy Act/confidentiality), only the appointed officials and stewards have privy to it. So if a member, in the capacity as a steward happens upon indiscretion on the part of a fellow member, what is he or she to do? According to the Board nothing, or what could be described as immunity by default. Ultimately of which is in violation of Section 8 by impairing the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

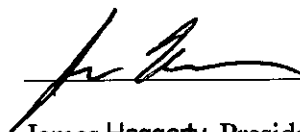
This is a legitimate union interest. What we have here is an employee-member deliberately acting in a destructive manner against the legitimate union interests. What is at issue is that Glenn Berrien, current Union member, former Union steward and former National President of the National Postal Mail Handlers Union assisting in enabling, composing and drafting (facilitating) numerous complaints with the NLRB for carrier craft employees directed against his own Union. This is not an arbitration proceeding arising from a grievance under a collective-bargaining agreement, and the cause of action is not a result of, or presented by the labor organization on behalf of another member. It is a direct result of an employee-member facilitating in drawing up and filing of charges for members of one union (NALC) against his own union (NPMHU).

This is not a Section 8 (b)(1)(A) issue of restraining or coercing employees in their rights guaranteed In Section 7. No, it is an issue involving Section 8(b) (1)(A) where it is provided, that this paragraph Shall not Impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. For the Board to aggressively and in an ongoing manner pursue and interfere with the right of a labor organization (NPMHU) to prescribe to and act on its own laws, rules and regulations.

### **Relief Sought**

WHEREFORE it is prayed that:

1. The Board Cease and desist from engaging in the conduct of aggressively and in an ongoing manner, pursuing and interfering with the right of a labor organization (NPMHU) to prescribe to and act on its own laws, rules and regulations.
2. Determine that said charges fail to state a valid cause of action;
3. Determine The NLRB lacks jurisdiction in this matter;
4. Dismiss said charges should the moving party fail to withdraw same;
5. Make Responding Party whole for any loss of earnings, benefits, travel and other expenses that may have been incurred as a result of the Charging Party and Board's conduct described above:

 5-29-12  
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James Haggarty, President      Date  
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